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Hon. Fred Van Sickle

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 By: Sean A. Moynihan & Peter J. Glantz  
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 8 *Group, Inc., Jeffrey Goldstein and Kenneth Adamson*

9  
 10 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF WASHINGTON**  
 11 **AT RICHLAND**

12 James S. Gordon, Jr.,  
 13 Plaintiff,  
 14 v.  
 15 Impulse Marketing Group, Inc.,  
 Jeffrey Goldstein, Phillip Huston,  
 16 and Kenneth Adamson,  
 17 Defendants.

Case No.: CV-04-5125-FVS

DECLARATION OF  
 SEAN A. MOYNIHAN, ESQ. IN  
 SUPPORT OF DEFENDANTS'  
 OPPOSITION TO PLAINTIFF'S  
 MOTION TO AMEND THE  
 COMPLAINT

18  
 19 Impulse Marketing Group, Inc.,  
 Third-Party Plaintiff,  
 20 v.  
 21 Bonnie F. Gordon, Jamila Gordon,  
 22 James Gordon, III, and Jonathan  
 Gordon,  
 23 Third-Party Defendants.

24 Sean A. Moynihan, an attorney and counselor at law duly licensed in the State of  
 25 New York, now declares:  
 26

27 DECLARATION OF SEAN A. MOYNIHAN, ESQ.  
 IN SUPPORT OF DEFENDANTS' OPPOSITION TO  
 28 PLAINTIFF'S MOTION TO AMEND - I

KLEIN, ZELMAN, ROTHERMEL & DICHTER, L.L.P.  
 485 MADISON AVE., 15<sup>TH</sup> FL., NEW YORK, NY 10022

1 1. I am a partner with the law firm of Klein, Zelman, Rothermel & Dichter,  
2 L.L.P., counsel for Defendants Impulse Marketing Group, Inc. (“Impulse”), Jeffrey  
3 Goldstein (“Goldstein”) and Kenneth Adamson (“Adamson”) (collectively,  
4 “Defendants”) in the above-captioned action. I submit this declaration in support of  
5 Defendants’ Memorandum in Opposition to Plaintiff’s Motion to Amend Complaint.  
6 Except as to matters alleged below as being upon information and belief, I am fully  
7 and personally familiar with the facts and circumstances set forth herein.

8 2. This action was commenced by Plaintiff in his individual capacity by the  
9 filing of a summons and complaint on November 23, 2004 against Impulse (the  
10 “Original Complaint”).

11 3. On or about March 29, 2006, Plaintiff filed a motion seeking leave to file  
12 a first amended complaint.

13 4. On or about May 2, 2006, this Court granted in part and denied in part  
14 Plaintiff’s motion to amend his original complaint. In particular, the order denied  
15 Plaintiff’s request to add new plaintiffs to the action.

16 5. On or about June 13, 2006, Plaintiff filed his First Amended Complaint,  
17 and, in direct contradiction to the Court’s Order, counsel surreptitiously added “dba  
18 Gordonworks.com” as a plaintiff in the action.

19 6. On or about August 31, 2006, Defendants moved to dismiss Plaintiff’s  
20 First Amended Complaint on several grounds including, but not limited to, the  
21 unauthorized amendment of the original complaint, lack of jurisdiction and failure to  
22 state a claim upon which relief could be granted. In addition, Defendants concurrently  
23 moved in the alternative for a more definite statement.

24 7. On or about September 11, 2006, Plaintiff filed a memorandum in  
25 response to Defendants’ motion concurrently with Plaintiffs unauthorized Second  
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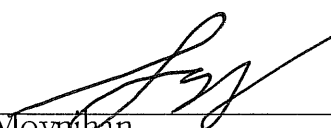
1 Amended Complaint. The Second Amended Complaint was filed unilaterally without  
2 Plaintiff ever seeking leave from the Court.

3 8. On or about September 13, 2006, Defendants filed an objection to the  
4 unauthorized Second Amended Complaint and returned the rejected pleading to  
5 Plaintiff's counsel.

6 9. Subsequent to the filing of the objection, Defendants requested that  
7 Plaintiff withdraw the offending pleading.

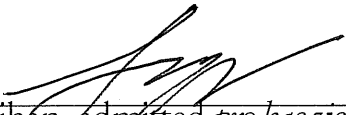
8 10. Now, almost exactly two (2) years and 419 docket entries after the filing  
9 of the Original Complaint, Plaintiff seeks to again amend his complaint, in effect,  
10 recommencing the entire action.

11 DATED this 23<sup>rd</sup> day of October, 2006.

12  
13   
14 Sean A. Moynihan

Certificate of Service

I, hereby, certify that on October 23, 2006, I electronically filed this pleading with this Court. The Clerk of the Court will provide electronic notification using the CM/ECF system, which will send an electronic copy of the Declaration of Sean A. Moynihan, Esq. in Support of Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Complaint to: Robert J. Siegel and Floyd Ivey. I hereby certify that I have served the forgoing to the following non-CM/ECF participants by other means: Bonnie Gordon; Jonathan Gordon; James S. Gordon, III; Robert Pritchett; Jamila Gordon; Emily Abbey and Hon. Harold D. Clarke, Jr.



Sean A. Moynihan, admitted *pro hac vice*  
Attorneys for Defendants Impulse  
Marketing Group, Inc., Jeffrey Goldstein  
and Kenneth Adamson